

A tax is imposed upon any person who exercises the privilege of engaging in business as a retailer of cigarettes in this State under the Cigarette Tax Act. See 86 Ill. Adm. Code 440.10. (This is a GIL.)

August 3, 2004

Dear Xxxxx:

This letter is in response to your letter received by the Department on December 9, 2003, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

I was instructed to write this letter by the staff at Licenses and Registration because they couldn't give me an answer to my question. So, this is my situation. I was contacted by a supplier that sells cigarettes over the Internet. As an agent I would operate and advertise a website. In doing so, I would take a fee from the customer and then pass the order on to the supplier who would then drop ship the cigarettes from their warehouse in COUNTRY. The person that is selling the website claims that since the cigarettes are shipped from a bonded warehouse, that it can be shipped to the U.S. without any taxes to be paid (Fed., State, or local). I enclosed some of the text he has on his website. My question is if I started this business, would I have to pay any taxes on these transactions? Also, if these transactions are taxable, could you enclose the supporting documents so I can show them to the website seller. Please, can you shed some light on this?

The Cigarette Tax Act imposes a tax upon persons engaged in business as a retailer of cigarettes in this State at the rate of 98 cents per package of 20 cigarettes. See 86 Ill. Adm. Code 440.10. The Cigarette Use Tax Act imposes a tax upon the privilege of using cigarettes in this State at the rate of 98 cents per package of 20 cigarettes. The Cigarette Use Tax must be collected by a distributor maintaining a place of business in this State or a distributor authorized by Section 7 of the Cigarette Use Tax Act to hold a permit to collect such tax. See 86 Ill. Adm. Code 450.10. If not purchased by a distributor, the tax must be paid to the Department by the person purchasing the cigarettes.

Payment of the tax shall be evidenced by a stamp affixed to each original package of cigarettes. See 86 Ill. Adm. Code 440.20. The Tax is collected up front from retailers by licensed distributors. It is the duty of each distributor to collect the tax from the retailer at or before the time of sale, to affix the required stamps and to remit the tax collected from retailers to the Department. Severe penalties may be incurred for noncompliance. See 86 Ill. Adm. Code 440.10.

Further, the taxes imposed under the Cigarette Tax Act are in addition to all other occupation or privilege taxes imposed by the State of Illinois, or by any political subdivision thereof. See 35 ILCS 130/2(c). An "Illinois Retailer" is one who either accepts purchase orders in the State of Illinois or maintains an inventory in Illinois and fills Illinois orders from that inventory. The Illinois Retailer is then liable for Retailers' Occupation Tax on gross receipts from sales and must collect the corresponding Use Tax incurred by the purchasers.

Based on the limited information provided, it would appear that persons engaged in the activities you have described are both "distributors" and "retailers".

Please note that Section 24 of the Cigarette Tax Act, 35 ILCS 130/24, states that any person other than a licensed distributor who sells, offers for sale, or has in his possession with the intent to sell or offer for sale, more than 100 original packages, not tax stamped or tax imprinted underneath the sealed transparent wrapper of such original package shall be guilty of a Class 4 felony.

In addition, recent legislation by the Illinois General Assembly would impose new restrictions on the delivery of cigarettes in this State. Please see Senate Bill 2148.

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Edwin E. Boggess
Associate Counsel

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